

## Exhibit 15, Part 1

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

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Diversi-Plast Products, Inc., a Minnesota corporation,	)	<b>EXPERT REPORT OF STEVE CARPENTER ON INFRINGEMENT</b>
Plaintiff,	)	
	)	
vs.	)	Civil Action No: 2:04-CV-01005 PGC
Battens Plus, Inc., a California corporation,	)	Judge: Paul G. Cassell
	)	
Defendant.	)	

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I, Steve Carpenter, submit this report on infringement of U.S. Patent No. 6,357,193 ("the '193 Patent") pursuant to Federal Rule of Civil Procedure 26.

**I. QUALIFICATIONS**

I am the project manager and estimator for S. Kramer Roofing, Inc. in Denver, Colorado. S. Kramer Roofing, Inc. does residential and commercial roofing, including asphalt shingle, and clay and concrete tile work. I have attached a copy of my professional resume as Appendix A, which further demonstrates my qualifications. I have not authored any publications in the past 10 years.

**II. PRIOR TESTIMONY**

I have not testified as an expert witness at trial or by deposition in the last four years.

**EXHIBIT**

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**III. COMPENSATION**

I am being compensated at an hourly rate of \$100 for my activities in connection with this matter, and an hourly rate of \$200 for all time spent testifying, whether in court or in a deposition. In addition, I am being reimbursed for reasonable expenses incurred as a result of my activities as an expert witness. My compensation is not contingent on my opinions offered in this matter or the outcome of this case.

**IV. INFORMATION AND MATERIALS CONSIDERED**

For purposes of my opinion I have considered the information and materials listed in Appendices B and C.

**V. STATEMENT OF OPINIONS**

I offer the following opinion on infringement of claim 2 of the '193 patent by the BattenUp tile batten system. In coming to this opinion regarding claim 2, I reviewed and applied the claim language, as well as the descriptions and drawings provided in the '193 Patent in light of my practical understanding and experience with roof battens and tile roofing systems. All of the language used in claim 2 is understandable after reading the '193 Patent. None of the claim language requires any special understanding or meaning.

I have been instructed by Diversi-Plast's attorneys that under U.S. Patent Law in order for a claim of a patent to be infringed each limitation or element of that claim must be found and identified in an infringing product or system. I have also been instructed that under the law a dependent patent claim also includes all of the limitations of the independent claim it depends from. As a result, I will assume that claim 2 includes all of the limitations of claim 1 as well.

Based on these instructions and a close comparison of the BattenUp tile batten system to claim 2, it is my opinion that the BattenUp tile batten system infringes at least claim 2 of the '193 Patent. My review of the materials and information attached as Appendix B indicates that Battens Plus sells the BattenUp tile batten and instructs its customers on how the batten is to be installed on a tile roof between the tile and felt to provide drainage and circulation through the batten. I have been instructed by Diversi-Plast's attorneys that this type of activity demonstrates contributory and induced infringement. My opinion shows Battens Plus' contributory and induced infringement of claim 2. In addition, I understand that Battens Plus and its customers have infringed claim 2 by using and installing the BattenUp battens on roofs as claimed. This, according to Diversi-Plast's attorneys, is referred to as direct infringement and my opinion shows how Battens Plus and its customers have directly infringed claim 2 of the '193 Patent.

### **INFRINGEMENT OF CLAIM 2**

It is my opinion that the BattenUp tile batten system infringes at least claim 2 of the '193 patent. I reviewed the following claims for my opinion:

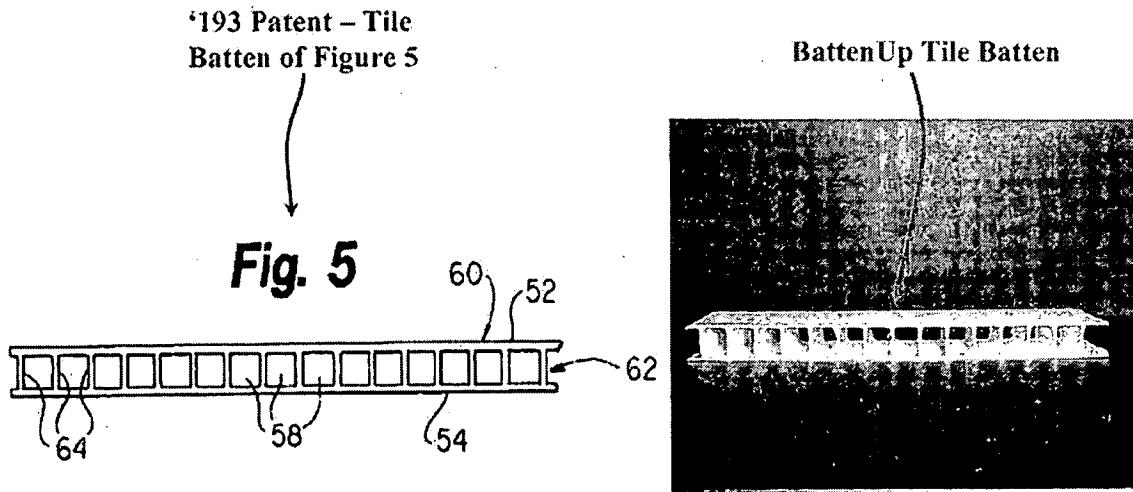
1. A tile roof system, comprising:
  - an overayment;
  - a tile; and
  - a batten disposable between the tile and the overayment, the batten comprising:
    - at least one layer comprising a generally planar first ply and a second ply, the first and second plies cooperating to define a multiplicity of passages extending generally transversely to a longitudinal axis of the batten.
2. The batten of claim 1, in which the second ply includes a multiplicity of cross plies extending between the first plies.

My opinion comparing each element of claim 2 to the BattenUp tile batten roof system is provided below.

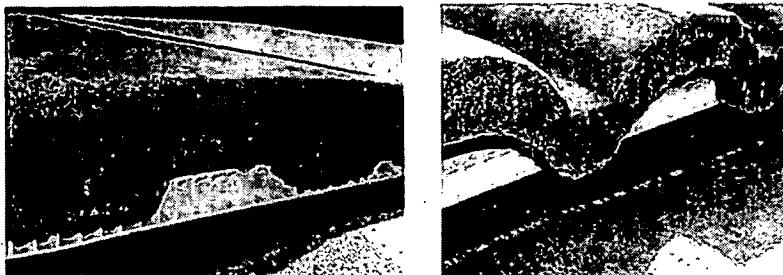
### The BattenUp Tile Roof System

The BattenUp tile batten roof system sold and advertised by Battens Plus of Sacramento, California includes a plastic tile batten made to lay over roofing material, such as felt, and under the tile to support the tile. The plastic BattenUp tile batten provides drainage and air circulation under the tile, through flutes or passageways in the batten.

After reviewing the '193 Patent and the BattenUp tile batten, I immediately noticed that Figure 5 of the patent shows a version of the patented batten that looks exactly like the BattenUp batten sold by Battens Plus. The cross comparison of Figure 5 and the BattenUp batten below shows this. Additional details on the comparison between claim 2 and the BattenUp tile batten are provided later in my opinion.

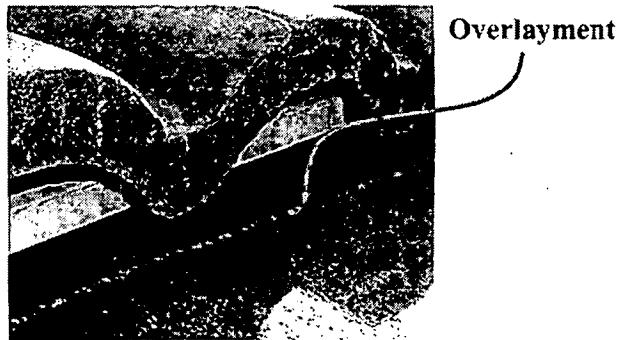


Below are pictures of the BattenUp tile batten system installed between a roof overlayment and a tile.



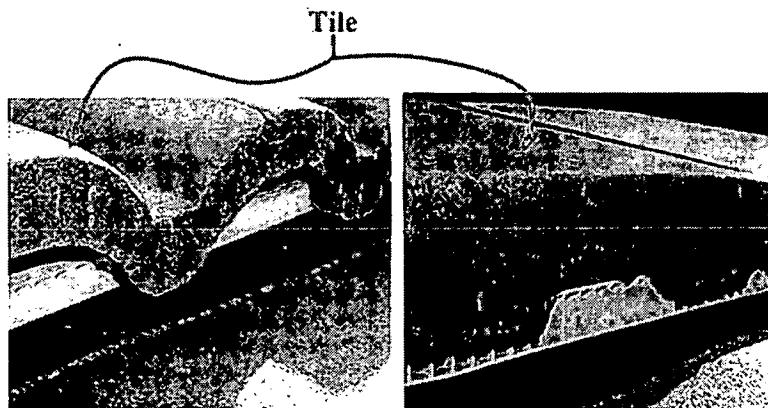
### Overlayment

Roof overlayment, also referred to as underlayment since it underlays the tile, is felt, Bituthene or other roofing materials secured on top of the roof deck. '193 Patent, Col. 1, lines 19-28 (describing overlayment as felt or tar paper attached to the roof decking); Col. 4, lines 36-37. Battens Plus advertises and instructs customers to install the BattenUp tile batten on top of roofing materials, such as felt. Battens Plus also advertises and tells its customers that its BattenUp tile battens passed and are in compliance with the International Code Counsel ("ICC") acceptance criteria for Class A tile roof systems (Legacy Reports ER-6106). The ICC Legacy Reports state that the BattenUp battens must be "installed directly to solid sheathing, parallel to the eave and spaced in accordance with the roof tile manufacturer's instructions." This element of claim 2 is present in the BattenUp tile batten system. The following photograph from Battens Plus' website shows how the BattenUp tile batten is situated on a roof deck overlayment.



### Tile

As explained in the '193 Patent, tiles can be made of various materials, such as clay, concrete, metal, etc. '193 Patent, Col. 4, lines 57-62. The BattenUp tile batten system includes this element of claim 2 because the BattenUp batten supports tiles on top of the roof decking and overlayment. Again, the ICC Legacy Reports state that the BattenUp battens "are plastic battens used in clay or concrete tile roof systems" and that the "roof tiles shall be conventional clay or concrete interlocking tiles with anchor lugs." As advertised by Battens Plus, and shown below, the "BattenUp battens are designed to meet required standards and fully engage villa and flat cement and clay roof tiles."



### Batten Having A Multiplicity Of Passages Including Transverse Cross Plies

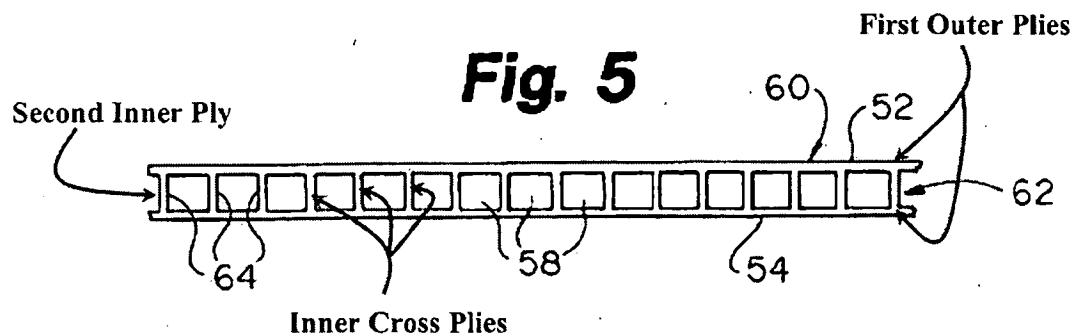
The batten of claim 2 of the '193 Patent is "disposable between the tile and the overlayment" and includes "at least one layer" having "first and second plies cooperating to define a multiplicity of passages extending generally transversely to a longitudinal axis of the batten." Claim 2 further requires that the second ply includes "a multiplicity of cross plies extending between the first plies."

The '193 Patent specification includes a figure and paragraph which explain exactly how the first and second plies, as well as the cross plies, combine to provide these transverse passageways through the batten.

Another embodiment of layer 34 is depicted in FIG. 5 generally as layer 60. Layer 60 includes planar plies 52 and 54 and second ply 62. Second ply 62 includes a multiplicity of cross-plies 64. Cross-plies 64 extend generally perpendicular (or otherwise transversely) between planar plies 52 and 54. Thus, planar plies 52 and 54 and second ply 62 cooperate to define a multiplicity of channels 58 therebetween.

'193 Patent, Col. 3, lines 18-25.

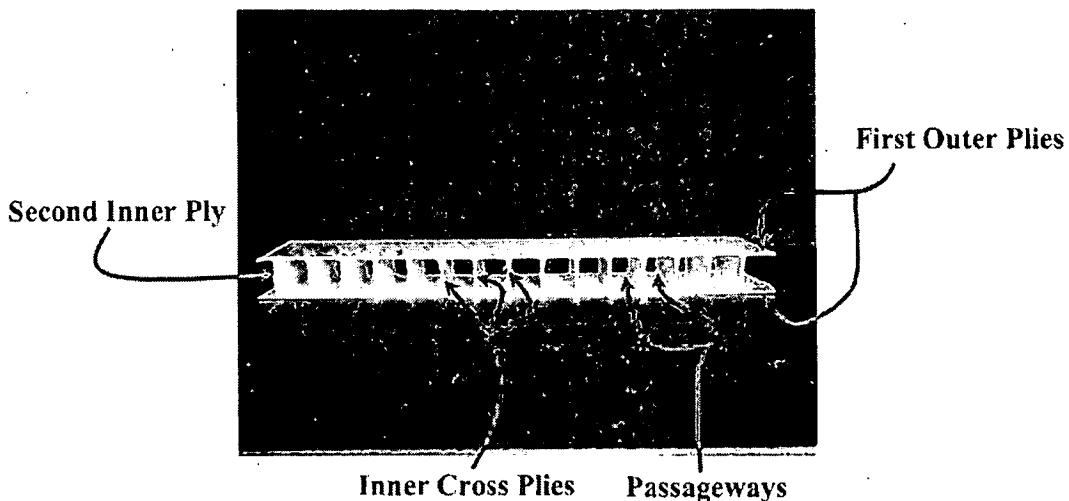
The above paragraph, and Figure 5, from the '193 Patent are the portions of the patent that refer to and show this version of the patented batten having "cross plies." The "cross plies" are generally perpendicular or transverse walls (64) of the second ply (62) that form vertical I-beam shaped sections. The first plies (52) are simply outer planar surfaces or sections of the batten separated by the inner second ply (62) and transverse cross plies (64). These cross plies or sections (64) create the passageways that run transverse or perpendicular to the length of the batten to create flutes or passageways (58) for water drainage through the batten. Figure 5 from the '193 Patent shows an example of the batten of claim 2 with these cross plies.



Each of these batten elements from claim 2 are found in the BattenUp tile batten. First, the BattenUp tile batten is "disposable" or placed "between the tile and the overayment," as shown below.



Also, the BattenUp tile batten has a single layer with outer first plies, and an inner second ply. The inner second ply has vertical cross plies defining inner passageways like those claimed in claim 2 of the '193 Patent. The ICC Reports state that the BattenUp battens are made of extruded polypropylene and have top and bottom surfaces and "vertical stiffeners" that form openings "between the top and bottom surfaces of the batten." The ICC Reports also state that "the battens shall be oriented to allow water to drain down the slope and pass through the batten openings." The photograph below of a BattenUp batten section clearly shows that the product has all of the parts or elements of the batten of claim 2.



## VI. CONCLUSION

Based on the reasoning provided in section V of this report, it is my opinion that the BattenUp tile batten system infringes claim 2 of the '193 Patent, both directly and through induced and contributory infringement. The BattenUp tile batten system includes each and every element of claim 2.

## VII. EXHIBITS

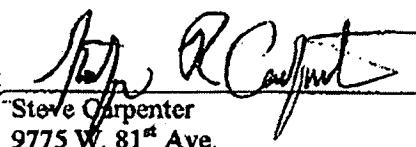
I may use exhibits at trial or other hearings, including (1) portions of the '193 patent, (2) portions of this report, (3) portions of the materials identified in the text and Appendices of this report, (4) sample batten products, and (5) exhibits as an aid to the Court in presenting my opinion.

In preparing this report I relied on the information and materials currently available to me. I reserve the right to continue my investigation and to supplement or modify my opinion based on documents and information that has not yet been produced or is not yet available, and based on any relevant information from or actions taken during the reissue proceeding for the

'193 Patent currently pending with the U.S. Patent Office. I understand that I may be asked to give further opinions in response to any future opinions expressed by Defendant's experts.

Respectfully submitted,

By:

  
Steve Carpenter  
9775 W. 81<sup>st</sup> Ave.  
Arvada, CO 80005

Dated: January 16, 2006

## APPENDIX A

## Steve Carpenter

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Arvada, Co 80005

720-341-7832 Cell

[Srctmmotorsports@msn.com](mailto:Srctmmotorsports@msn.com)

Experience: 1999-Present **S. Kramer Roofing, Inc.** Denver, Co

### **Project Manager/ Estimator**

My responsibilities for this position included

- Customer relations, sales, development of new product usage, ordering product for jobs, scheduling projects.
- Meeting with customers to help them make important decisions such as colors, materials best to use, giving information such as time to complete roof, warranty information, meeting with realtors for home sales, and meeting with insurance adjusters to get roof work approved. Over all making the customer comfortable with the process of getting a new roof.
- Specialized products are APP Modified Bitumen Membrane (Torch Down), Tile, Flow-Thru tile battens, Lamerite Slate, All Tamco products, all Certainteed products, All GAF Products, and many more.

1998-1999 **Cobb Brothers Racing** Denver, Co

### **Indy Car Mechanic**

- Engine and Chassis specialist for IRL team.
- Tire Changer during pit stops.

1987-1998 **Various Manufactures** State of Colorado

### **Cabinet Maker / Shop Forman**

- Various Positions in the cabinet making industry from production to design and also sales.

1983-1986 **Coral Construction** Marathon, Fl

### **General Laborer**

- Full service builder constructing custom built homes.
- Duties included concrete and framing work, electrical, and tile roof installation

1982-1986 **United States Cost Guard** Marathon, FL

### **Seaman – Boatswains Mate / EMT**

- Duties included search & Rescue, Law enforcement, Drug interdiction

Education: **High School Diploma** Wheat Ridge High School Wheat Ridge, Co

All required courses taken

**EMT Certification** Navel Air Station Jacksonville, FL

## APPENDIX B

### INFORMATION AND DOCUMENTS REVIEWED AND RELIED UPON

United States Patent Number 6,357,193 B1 with related file history

BattenUp tile batten sample (BP 0001)

Digital Photographs of the BattenUp tile batten (BP 0001)

Battens Plus website (BP 0002 – BP 0008)

Battens Plus website (no markings)

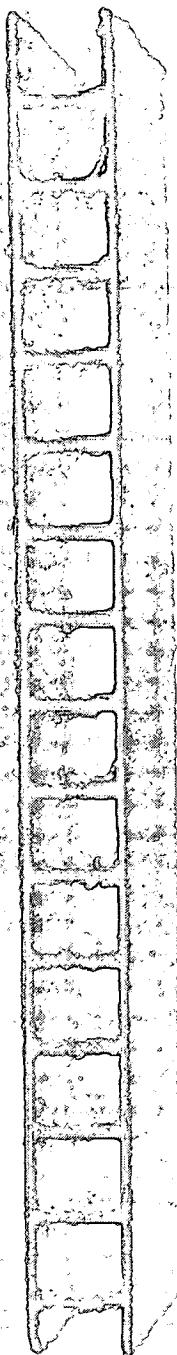
A copy of U.S. Provisional Application No. 60/112,567

Documents produced by Battens Plus (BP 0012-0014, BP 0245-0247, BP 0254-0255, BP 0267-0268, BP 0331, BP 0348-0349, BP 0363-0364, and DP 01533-01546)

## APPENDIX C

MF - 0001

-WESTCOTT





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